worth of Chatham Bank stock was charged against this account (App. 45). This transaction was the basis of counts 1 and 2.

Central generally did not sell a construction loan until the building was 60 percent completed since the banks would not advance money until the construction was that far advanced (S. App. 21, 25). The buildings in the instant case were not at the 60 percent stage in July 1961 (App. 114–115). On occasion, Central had obtained interim financing by signing a note and pledging the mortgage (S. App. 7). In the instant case Central did not sign a note nor did it endorse the borrower's note (S. App. 9–10). The note Central gave to Tinley was signed by the trustee for ADK and made payable to Central. It was not endorsed over to Tinley at any time (S. App. 9–12; Ex. 16B).[2]

On August 10, 1961, Pickle instructed the assistant secretary of Central to prepare loan papers on four other construction loans for ADK at $145,000 each (S. App. 4). On August 29, 1961, on Pickle's instructions, these papers (which had been recorded as assigned to Service) were given to Tinley by the employee in exchange for a $440,000 check. The employee then issued a $435,000 check to Tinley to pay off the first three loans (S. App. 4–6). This transaction formed the basis of count 5.

In November 1961, when the owners of ADK had completed 60 percent of the construction, they at-

[2] Exhibits 16 part A, B, and C are being lodged with the Clerk of this Court. They demonstrate that no endorsement or assignment was made to Tinley.

tempted to get the funds they had borrowed. Pickle referred them to Katschke. After much delay, Katschke told them in February 1962 that their money was tied up in an attempt to obtain control of the Chatham Bank (App. 48, 116). He further informed them that the attempt had been successful and that they could get a quick loan of $25,000 at Chatham (App. 48, 116). This was done the next morning (App. 49, 116). Katschke promised to assume the interest on this note (App. 49, 116-117). ADK never received more than 40 percent of the funds for the second group of mortgages (App. 47), and it subsequently brought a suit to rescind them (App. 56-57).

ARGUMENT

1. The three issues presented by petitioners (Pet. 2, 3) in reality present no more than a challenge to the sufficiency of the evidence—an issue which does not warrant review by this Court. *Scales* v. *United States*, 367 U.S. 203, 230; *United States* v. *Johnson*, 319 U.S. 503, 518; *Delaney* v. *United States*, 263 U.S. 586, 589–590. In any event, if the complex disguises are stripped from the loan transactions in this case, it is apparent that Katschke borrowed $350,000 without security from a savings and loan association of which he was an officer. With Pickle's assistance he consummated a transaction indirectly that he was not legally permitted to make directly.*

* 18 U.S.C. 1006 explicitly provides that savings and loan officers commit the offense prescribed therein if they receive funds with the requisite intent "directly or indirectly * * *." Katschke signed a $350,000 note payable to Pickle on July 20, 1961 (S. App. 19), but the evidence clearly sustained the inference that he knew the source of the funds.

The evidence was clear that Katschke used the proceeds of the loan, ostensibly made to a bona fide borrower, to buy control of another bank. He admitted this to the borrowers. The disbursement check, through one intervening step, was deposited in the account of a company controlled by Katschke. The subsequent loan on the second four lots was nothing more than a further attempt to conceal the illegal use of the association's funds. The first loan was repaid with the proceeds of a new loan at a time when construction had not even commenced. This gave petitioners more time to use the association's money since the borrower was not to be paid until 60 percent of the construction was completed.

2. Petitioners' argument that only the borrower was harmed is unsound. Petitioners placed the savings and loan association in the position of an unsecured lender. The note signed by ADK was never endorsed to Tinley; it could not, therefore, generate an equitable assignment of the mortgage. The fact that Tinley had physical possession of the note might have blocked other transactions, as petitioners suggest (Pet. 15–20), but it did not constitute proper security for the loan.

3. Since the loans were not properly secured, and since Katschke was aware of the defects, he knowingly created a risk of loss in order to benefit his own independent venture. That risk alone was enough to support his conviction on the first two counts. *E.g.*, *Golden* v. *United States*, 318 F. 2d 357 (C.A. 1); *United States* v. *Matsinger*, 191 F. 2d 1014 (C.A. 3), *Rakes* v. *United States*, 169 F. 2d 739 (C.A. 4), certiorari denied, 335 U.S. 826. And since the proceeds

of the loan involved in count five were used to repay the earlier loan, the funds were obviously used for Katschke's benefit. In these circumstances, his conviction on that count was proper even in the absence of testimony linking him directly with the second disbursement by Tinley.

4. Nor is there any merit to the claim that the funds which Katschke used were funds of the Midlothian Bank rather than of the savings and loan association of which he was an officer (Pet. 27–31). In light of the circumstances under which the underlying check was given to Pickle, the judge could reasonably conclude that Katschke was aware of the source of the money given to his company by Pickle.

5. Finally, there was abundant evidence of intent to defraud (Pet. 36–40). The circuitous route which the Tinley funds took before they reached Katschke's company alone support the necessary inference of intent.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.
FRED M. VINSON, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
DONALD I. BIERMAN,
Attorneys.

NOVEMBER 1965.

U.S. GOVERNMENT PRINTING OFFICE: 1965